PUBLIC REGULATION OF RAILWAY WAGES

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"The food and clothing of our people, the industries and the general welfare of the nation, cannot be permitted to depend upon the policies and the dictates of any particular group of men, whether employers or employees, nor upon the determination of a group of employers and employees combined. The public utilities of the nation are of such fundamental importance to the whole people that their operation must not be interrupted, and means must be worked out which will guarantee this result."

These concluding words of the arbitrators in the dispute between the locomotive engineers and the railways in 1912 give warning of a situation to which the public has been singularly indifferent. Adjustment of working conditions has been considered a matter of private concern affecting only employer and employed. Yet the railway provides a service which is a necessity of the entire people, and the interruption of this service is a national calamity. Wage increases in this industry are usually sooner or later shifted to the shoulders of the people at large in the form of increased rates. The public's interest in railway labor controversies is supreme and should assert itself far more effectively than it has thus far in the consideration or adoption of any plans for wage regulation.

There are today on the payrolls of the railways of the United States, nearly two million men, who receive in wages annually a billion four hundred million dollars. Forty-five per cent of the gross revenues of the carriers is paid out again in wages; and of the total expense of operating all the railways in the country, nearly 65 per cent is chargeable to labor.

This great body of wage earners is by no means homogeneous. Its membership ranges all the way from the alert, intelligent, well-paid engineer down to the shifting class of day laborers engaged in track work. Neither are all classes organized to the same degree of efficiency and power. The bargaining strength of the great mass of track workers amounts to little. They have no fixed habitation, but assemble when work offers and disappear when the year's repairs are complete. Above these, but below the top, is a considerable group of occupations with organizations that are gen-

erally affiliated with the American Federation of Labor, such as the wood and metal workers, machinists, signalmen, clerks, and station agents. Finally at the top are the four brotherhoods directly engaged in train service. Although these four unions contain not quite a fifth of the whole number of employees, they represent the dominant element in the railway labor world and it is largely in connection with them that experiments in wage regulation have been tried out in this country. The oldest is the Brotherhood of Locomotive Engineers, organized in 1863, with a present membership of about 75,000. It is perhaps the most aristocratic of trade unions. In its later years it has become distinctly more aggressive. Its avowed intention is to monopolize the operation of locomotive power. Mr. Stone, the present chief of the Brotherhood, made this statement before an arbitration board in a recent case:

> The locomotive engineers of this country intend to operate the motive power of this country, be it what it may, gasoline, electricity, or any other power that may be discovered; and when you put on your flying machines in the near future, we intend to operate those, if you please.

Younger by five years is the Order of Railway Conductors, with a membership of 49,000. Recently it has been associated in controversies with the larger and more radical trainmen's organization. Ten years after organization of the engineers' brotherhood appeared the Brotherhood of Locomotive Firemen and Enginemen. It has a present membership of 84,000. Because of its more favorable insurance rates, this organization retains many firemen after their promotion to the rank of engineer. After many years of strife, the two brotherhoods of the engineers and firemen have adopted a working agreement and are at present associated in a wage movement in the West. The Brotherhood of Railroad Trainmen, organized in 1883, has a membership of 135,000. It is the least homogeneous of the four, including in its number train-brakemen and baggagemen, and conductors, brakemen, and switch tenders in yard service.

All four of these unions follow a policy of strict non-affiliation with other organizations, they disbelieve in the sympathetic strike, they take great pride in their fidelity to their agreements, and they punish breaches of contract on the part of their locals. They are as a rule in favor of the open shop,[1] although there are many ways

[1] The "open shop" policy loses much of its reality, at least in the case of the engineers, from the length of the apprenticeship period.

of making a non-union man realize that he is an "outsider" other than those laid down in the constitution and by-laws. All of them have extended their jurisdiction throughout the country, and none of them has any rival of any considerable strength outside the brotherhoods themselves. The first three contain a large proportion of the eligible men and the fourth about 65 per cent of the employees in its field.

The principal point of contact between these several brotherhoods and their employers is made through the labor contract, or what is commonly known as the schedule. In the early days of railway operation and for several decades thereafter rates of pay and working conditions on each railway and even on separate divisions of the same railway were whatever the managers chose to make them. Attempts at collective bargaining almost always failed. It was the engineers who soon after the creation of their union established firmly the principle of collective bargaining, and they and the other trainmen's organizations that appeared later were able as they increased in strength to gain important concessions from the railways, and to incorporate these concessions into standard practice. Such matters were involved as promotion according to seniority of service, shortening and prescribing the length of the working day, and standardizing various details relative to operating conditions. But of more importance than all else in the history of this labor conflict was the adoption by the railways of the practice of dealing with a committee of employees, now universal on American roads.

As a rule each division of a railway has its local. The locals of a system are represented in their dealings with a railway by a general committee headed by a chairman. Above these general committees are the grand officers of the brotherhood whose jurisdiction is national. For many years it was the practice to confine all bargaining to a single railway, but the area covered by such negotiations has gradually widened with the growth of railway systems. The general committee on the particular road was always advised and aided by the grand officers of the brotherhood. These national leaders thus became highly expert in handling controversies. With a thorough knowledge of the general railway situation, they were far more than a match for any individual railway manager who knew simply his own situation. There was frequent resort to "trading," by which the brotherhoods would

secure some distinct advantage in return for a concession that cost it little. The advantage thus gained would be used as a lever on the next road, while the concession by which the advantage had been acquired would be kept in the background. So they proceeded to play one road against another. But this method was slow and toilsome. Moreover it became evident to the leaders of each brotherhood that their power could be greatly increased through combined effort, and that a demand applicable to a vast extent of territory would be far more impressive. On the other hand, the developing of intercorporate relations among the railways that linked them up into huge systems, had much to do with promoting concerted action.

Concerted movements among employees in train service began in 1907, and have grown in frequency until now, except for minor local grievances, they may be said to be well-nigh the only method by which the demands of the brotherhoods are presented. The country is divided into three great territories, the Eastern, Southeastern, and Western; and committees representing all of the railways in each of these territories meet the grand officers of the brotherhoods to arrange wage conditions for the entire area. At first the roads resisted, but the brotherhoods became so effective in such cases in securing the same results from the roads successively that they would have obtained from them collectively that the railways gave up the fight, and have for several years conducted their important negotiations as a group. At the present time an arbitration hearing is being conducted in Chicago as the result of a concerted movement involving the engineers and firemen employed by nearly all the railways between Chicago and the Pacific Coast.

Proposals for increases in wages or modification of working conditions, often radical and extreme in character, usually originate in the "locals" with the rank and file, who apparently have everything to gain and nothing to lose by making their demands as large as possible. These demands are put in shape for presentation to the roads by the association of general chairmen, the grand officers appearing as advisers and later as spokesmen in the conferences with the railways. If it becomes necessary to take a strike vote, the case is set forth in the letter to the men. This gives opportunity for an *ex parte* statement of the situation, which is frequently taken advantage of. The result is almost always a

nearly unanimous vote to entrust to the grand officers the power of calling a strike. The tenure of office of these brotherhood chiefs depends in great degree upon their success in obtaining concessions from the railways. Facing on the one side the insistent pressure from the men, and on the other the resistance of the railways and the possible hostility of the public, they find their lot at times an unenviable one. They are between the devil and the deep sea. Yet they have displayed remarkable powers of leadership and have retained as a rule the complete confidence of the men. The cohesion of these organizations is a powerful element in their success.[2]

Territorial controversies have now become the rule, and have such strategic advantage for the men that they are not likely to be abandoned. One territory is now matched against another where formerly it was one road against another. The most significant result has been the marked movement toward complete standardization of wages and working conditions throughout the territory involved. This demand for standardization has been more or less vigorously pushed in all the recent controversies,—the same pay for the same work in the same class of service, whether train operation is on single or double track, in mountainous or level country, in branch or main line service, in suburban or through service. In fact, the standard rate has been an indispensable weapon in the leader's arsenal.[3] The railways have resisted this movement on the ground that differences in physical characteristics of roads, in traffic density, and in ability to pay have made complete standardization inequitable.

It is not the purpose of this paper to discuss the merits of contentions of this character, interesting as they are. But it may be noted in passing that the railways have realized that the argument for differences in wages based on differences in ability to pay crumbles under attack, and they are not now pressing it with any vigor. It has been generally held by arbitrators that a worker is entitled to his hire, that if a road cannot pay a proper wage it must seek relief in an enhancement of its earnings, and that the public will not permit a road to furnish an inferior service through

[2] For further information concerning the growth and policy of the brotherhoods and the results of recent arbitrations see Cunningham, in *Quarterly Journal of Economics,* November, 1910, and February 1913; Powell, in *Quarterly Journal of Economics,* February, 1914; Robbins, "Railway Conductors," *Columbia University Studies,* 1914.

[3] See McCabe, *The Standard Rate in American Trade Unions,* 1912.

the employment of an inferior grade of men at wages below the prevailing level. This position must be accepted as sound. There is likewise much in the contention of the employees that many of the weaker roads are so interlocked with the more prosperous ones that their inability to pay standard wages is more apparent than real.

Whether or not there is justification also for disregarding differences in physical and traffic characteristics on different roads, which heretofore have been important considerations in the determination of rates of pay, this much is clear. Such disregard is tantamount to unfair discrimination among employees. It is a disregard of the individual in the larger strategic interest of the organization as a whole.

It is interesting to observe that the interpretation placed upon standardization by the employees is equivalent to a demand for a minimum wage, for it has been usual to insert in the agreements for arbitration a stipulation providing that no existing rate of pay or standard of working conditions shall be reduced by the new rates or rules, and that committees shall not be debarred from taking up with managers matters not decided by the arbitrators. It is standardization upward but never downward. It leaves the high spots plainly in view and points the direction to future negotiations. Such stipulations concerning the preservation of existing rates hold out a promise of a continuous rise in the standard. In the engineer's case in 1912 the award was an intentional establishment of a minimum wage, the board of arbitration refusing to carry the principle of standardization farther than to raise the lowest rates, and to leave to the employees on individual roads the negotiation of contracts that should recognize varying classes of service.

Another step forward in standardization was attempted in the last concerted movement, that of the conductors and trainmen in Eastern Territory, when the demand was made that the rates of pay should be raised to equal those in the West. The comment of the board of arbitration on this point is so significant as to be worth quoting:

> . . . It is the prevailing opinion of this board that the policy urged by the men in this regard is in the large interest of the railroads as well as of the public; so that progress should be made in this direction as fast as circumstances will permit. In the universal conception of the day, interstate railroading is a national public utility; being such,

uniform rates of pay for the same class of service are likely to prevail, sooner or later, in all parts of the United States where permanent natural conditions do not forbid. In the Railway Post Office Service conducted by the United States rates of pay differ according to the character of the work performed; but there is no difference of pay resting upon territorial distinctions. It is said with truth that the government is free to adopt this system because it can make up deficiencies through taxation; but it appears to the majority of this board to be none the less true that the railroads of the country, just because they are conceived of as a national public utility, will in the end be obliged to conform their practice to the government practice in this regard. The rates which railroads are permitted to charge, both for passengers and freight, must in the opinion of this board be adequate ultimately in all parts of the country to permit uniform rates of pay to be paid. . . .

That the brotherhoods have in mind ultimately a national standard of wages and working conditions, there is some evidence, but a national movement will not be inaugurated until it is found to be strategically advantageous. The first duty of the unions while in the midst of a conflict is to win their case, and they use such arguments as are most effective at the moment. The controversy just referred to furnishes an illustration in point. The argument for national standardization was urged by the conductors and trainmen because they were trying to raise the eastern wages up to the level of the West. When they reach the West, they are very likely to lay stress on the greater cost of living in that territory, and to insist upon a restoration of the previously existing differential in favor of the western area. In controversies in the East cost of living has not been emphasized, Mr. Stone of the engineer's brotherhood insisting that cost of living is after all what each man chooses to make it. Inconsistencies in proposed bases for increased wage rates, and in arguments supporting the proposals, constantly appear in cases presented by the same brotherhood officers in different territories, inconsistencies so striking as to defy any explanation, except that they are of value for immediate strategic purposes. The result of it all is to raise the lower end of the wage scale and to smooth out many of the differences in working conditions on different roads and in different territories. But these results have been attained in a haphazard fashion, and are attended by much discrimination. There has been little in the whole process up to the present time that could be designated as scientific.

A further movement is now in progress to secure the association

of all the brotherhoods in one united demand upon the roads. On more than twenty-five railway systems federation of the four brotherhoods is in effect, and on others working agreements exist between two or three of these organizations. Recently the articles of federation of these four unions have been revised to permit coöperation with other organizations whose membership is exclusively employed by railway companies, such as the telegraphers and railway clerks. For a number of years, the conductors and the trainmen have coöperated in their wage demands. The present association of the engineers and firemen in a joint movement in the West may well be considered, in the light of earlier unhappy relations, as a fraternization of the lion and the lamb. Faced by this new ideal of a united labor force in an undivided country, the public may well give heed and devote its best thought to a consideration of its own interest in the outcome.

Thus far we have been concerned with the evolution of the labor contract. We have now to consider the extent to which public authority has played a part in the settlement of labor conflicts. And here we may well confine our attention to federal law and practice. The railway industry has become so completely independent of state boundaries that state regulation of wages has touched only incidentally the steam railway field.

The first important federal statute which attacked the railway wage problem was the so-called Erdman Act enacted in 1898. Even this law remained practically unnoticed upon the statute books until the end of 1906. However, when its possibilities were fully realized, it was resorted to with increasing frequency, so that in the last few years those entrusted with its administration have been almost steadily engaged in mediation proceedings. The statute covered interstate railways and employees engaged in train service. It designated as mediators two federal officials, the Commissioner of Labor and the Chairman of the Interstate Commerce Commission.[4] In case of a controversy interrupting or seriously threatening to interrupt the business of the carrier, the mediators at the request of either party were to endeavor to effect an amicable settlement. This failing, a board of arbitration might be appointed consisting of three persons, one named by each of the contestants and the third by the two already selected, or in case of disagreement by the mediators. The board was to begin hearings within ten days after choice of the third arbitrator and to file its

[4] Later amended to permit the retention of the same individuals as mediators.

award within thirty days of his appointment. The signed agreement to arbitrate had to carry a stipulation that the status of the dispute should not be changed pending the arbitration except that "no employee" should "be compelled to render personal service without his consent." Moreover it was to be further stipulated that employees dissatisfied with the award could not quit the service, nor dissatisfied employers discharge their men before the expiration of three months without thirty days' notice. The award was to be final unless set aside for errors of law apparent on the record, and was to continue in force for a year. The arbitrators were empowered to administer oaths, require the attendance and testimony of witnesses, and the production of books and papers. It is significant that the act provided mainly for the well organized groups of employees. In fact, it was provided specifically that the workers' representative on the arbitration board should be named by the labor organization involved, if such existed, and the federal officials were empowered to decline to call a meeting of the arbitrators unless they were satisfied that the employees signing the agreement represented a majority of those involved.

Congress had the arbitration feature principally in mind, yet that feature proved to be of far less importance and efficacy than the mediation section. Dr. Neill, reviewing the working of the law up to 1912, shows that out of forty-four cases in which mediation was invoked only eight went to arbitration, and in these eight cases arbitration was limited to certain points in which mediation had failed. Four other cases were submitted to arbitration directly.

During the years in which this statute was in force, there was no case of repudiation of the award of an arbitration board. Mediation likewise accomplished its purpose in practically every case of importance in which it was employed. Procedure under the act was purely voluntary. Neither side was compelled to resort to it, and neither side was obliged to accept the offer of mediation after it had been made. Furthermore, the mediators had no power to intervene until invited by one of the contestants. Yet in spite of the strict legal limitations of the statute, the imperative necessity for uninterrupted transportation and the power of the public to bring its will to bear made the appearance of "free will" in large degree illusory. Railway managements, faced with the problem of suspension of service, realized its heavy cost to them financially

and likewise fully appreciated the fact that an inconvenienced public would be deaf to any appeal on the merits of the controversy, and would visit its wrath upon the delinquent corporation. Therefore it is not surprising to find that the railways as a rule were the ones to appeal to the mediators, and it speaks for the brotherhoods' sensitiveness to public opinion that with very few exceptions they agreed to mediation, even though in most cases they possessed the strategic advantage in the controversy. It has been stated that the mediators were not empowered by the Erdman Act to intervene of their own initiative, yet they did so more than once at the request of the President of the United States. What appears to be only voluntary "getting together" becomes practically compulsory when the head of the nation, representing the whole people, sends his "mediators" to the scene of impending conflict. Refusing to listen to the "request" of the President is like refusing to pass over your pocketbook when there is a pistol at your head. That the power of the President is a very real one may be shown by the latest and most striking case of his intervention. In connection with the controversy between the western railways and the engineers and firemen under arbitration in Chicago, when the federal mediators had been called in, and a crisis had resulted from their failure to secure an agreement, the following telegram was received from President Wilson:

> Before final adverse decision by either side, I think it my duty to ask for a conference with representatives of both sides designated to confer with me. Mediation must not fail.

At the conference which followed, the President presented to the railways the extreme gravity of the situation into which the country would be plunged if a strike should occur, especially in view of the conditions brought about by the European war. He expressed the conviction that no peaceful solution was possible except that proposed by the mediators, which, as will appear was merely that of arbitration on the basis demanded by the employees, and appealed to the patriotism of the railways, and to their regard for the public welfare to make whatever sacrifice was necessary to avert a national disaster. No course was open but to accede to the President's request with the best grace possible. While it must be conceded that the President has in such cases performed a real service in the public interest, it is impossible to regard his action as wholly uninfluenced by any ulterior motive. He is the head of a party as

well as the head of a nation, and labor disturbances are not conducive to party success. This practice, unauthorized by statute, has such possibilities of unwise exercise that it should be employed only when there is no alternative.

As controversies assumed larger dimensions and the concerted movement became a regular and apparently a permanent method of negotiation, it was realized that a board of three members, in which the decision lay with one man alone, was too small a body to which to entrust issues of such magnitude. This was the motive for replacing the Erdman Act in 1913 with the so-called Newlands Act. At this time negotiations were being conducted between the railways and the conductors and trainmen in Eastern Territory. Both sides realized the desirability of a larger board and pressed for immediate legislation. Certain changes in the form of procedure long recognized as needed were also urged and adopted. The Newlands Act provides first for mediation by a Board of Mediation and Conciliation consisting of a permanent commissioner and two other government officials. They are given the power not possessed by the former mediators of proffering their services. In case the controversy goes to arbitration, the board may consist of six members rather than three, if the parties prefer—two representing each side and two intermediaries chosen by a majority vote of the four. In case of failure to choose in this manner, the selection is made by the federal mediators. Details of arbitration procedure need not here be dwelt upon, but attention should be called to the fact that a majority may make a binding award, that the board is to confine itself in its decision to questions specificially submitted or to matters directly bearing theron, and that misunderstandings concerning the interpretation of the award are to be referred back to the board. Under this act the conductor's and trainmen's arbitration of last year was heard and under it the present hearings in Chicago in the engineers' and firemen's case are now being conducted. The engineer's arbitration in Eastern Territory in 1912 was held under an extra-statutory agreement which provided for a board consisting of one representative each from the railways and the employees, and five men representing the public.

We have therefore witnessed in this country a series of concerted movements extending over great stretches of territory and covering the period from 1907 to the present time, in which four different methods of settlement have been applied,—mediation under the Erdman Act, arbitration under the Erdman Act, mediation fol-

lowed by arbitration under the Newlands Act, and arbitration by voluntary agreement outside the statute. Which of these methods, if any, is a panacea for labor troubles on interstate railways? If no one of them stands the test, can our experience with them be made the basis for a better solution of this difficult problem?

At the outset it may be asserted that the avoidance of labor conflicts is not the sole object or the ultimate goal of wage-regulating legislation, and that the absence of strikes is not a final index of the success of the laws which have been described. It is of course obvious, particularly when the transportation industry is under consideration, that the maintenance of normal operating conditions is an end greatly to be desired. From the standpoint of the general public, which can only occasionally be made to look below the surface, this appears to be the one and only object of all legislation relative to mediation and arbitration. It seems to be the thought uppermost in the mind of our Chief Executive when he makes his appeal to the railways in behalf of the American people. This is doubtless the expression of a feeling that whether or not the results of mediation are absolutely just and fair to both sides, the likelihood of any more equitable outcome from a labor conflict is somewhat remote, and that even if a more satisfactory verdict were reached through force of arms, the advantage would be far outweighed by the cost of the conflict. Moreover, although it would be rash to assert that there will never be another railway strike of large proportions, the likelihood of such an outcome of any controversy is growing more and more remote. We have not had a railway strike of any magnitude for twenty years. It is true that the balance of power in the control of wage conditions has passed for the moment from the railways to organized railway labor. It is true that strike votes are always taken, and that these result in entrusting to the grand officers of the brotherhoods the power to call a strike at their discretion. But these polls are in most instances mere devices to strengthen the strategic bargaining power of the organizations. It is always the confident expectation of the grand officers that possession of the power will make its exercise unnecessary.

Prompt adjustment of the instant controversy was the service that the able mediators under the Erdman Act, Judge Knapp and Dr. Neill, performed. They succeeded in nearly every mediation which they conducted in reaching an adjustment to which both

sides were willing to agree, and today railway managers and employees are unanimous in commending the work of those public servants. They prevented labor conflicts, an outcome which satisfied the public, and they compromised the disputes with such a degree of success that although neither side was satisfied, both were willing to abide by the result and the employees were contented to delay for a season a renewal of their attack upon the railway "wage fund."

The wisdom of so framing the statute as practically to designate two specific individuals as mediators became evident, as these gentlemen grew more and more familiar with the complex details of the wage schedule and were able to adjust controversies with increasing intelligence. It more than once happened that they were called in to pass on the merits of an existing schedule which they themselves had had a part in constructing. The element of permanence in the mediating body made possible the development of an expert proficiency in the work of adjustment. The weakness of the method was contained in its very nature. It was a mediation and not an arbitration. The function of the mediators was in no real sense to enter into the merits of the controversy. Judge Knapp has thus interpreted their duties:[5]

> It has been the conception of those who have acted in this capacity that their duty is not to determine what settlement they think ought to be made, but to find out what settlement can be made. Although the public is really the third party and perhaps the most important party to a labor dispute, nevertheless the public, that is to say, society, is not concerned or interested in the terms of settlement. All society asks is that there be a settlement, so that the work may go on without further delay.

Dr. Neill writes as follows:

> Their functions consist solely in exercising friendly offices and attempting to harmonize the differences existing between the employer and the employees and by inducing concessions from each side to bring them to a voluntary agreement upon all the points at issue.[6]

This policy of seeking an adjustment rather than a judgment on the merits of the issue is well shown in the engineers' and firemen's case of this present year in Western Territory in which President Wilson intervened. When the employees presented their demands, the railways canceled existing schedules and made counterdemands.

[5] *Proceedings 12th Annual Meeting,* National Civic Federation, 1912, pp. 30-31.
[6] U. S. Bureau of Labor *Bulletin* No. 98, p. 15.

To these the employees vigorously objected, insisting that they would give up nothing that they had gained in their years of struggle, and refusing to consider any terms except those which they themselves had proposed. The federal mediators when called in, accepted the point of view of the employees, apparently because they found that there was no other way to avoid a strike. This "compromise" the employees promptly agreed to, contending that they had gone half way in accepting arbitration at all, since they had earlier asserted that they would never again resort to a method which had produced results so unsatisfactory to them. Hence the railways were put in the position before the public of declining the proposal of a federal mediation board which the employees had accepted. They had been out-manœuvered and their capitulation was inevitable even before they made their call at the White House.

Statistical demonstration of the compromise character of the mediation verdicts is shown in the following summary,[7] prepared by Professor Cunningham of the rates of pay in force, demanded, and awarded by the mediators, on the Baltimore and Ohio Railroad in 1910. It should be noted that the old rates on the Baltimore and Ohio were at the time the highest rates paid in the East with the exception of those on the Pennsylvania, and that the award was made the principal basis for settlement with all the other eastern roads. The award is a perfect example of "splitting the difference."

BALTIMORE AND OHIO RAILROAD—1910

	Cents per mile		
	Old Rates	Rates Demanded	Award
Through Passenger Conductors	2.60	2.75	2.68
Through Freight Conductors	3.465	3.80	3.63
Through Passenger Brakemen	1.33	1.65	1.50
Through Freight Brakemen	2.31	2.53	2.42

It may be pointed out here that those who rhapsodize over the beauties of mediation as a means of bringing together in brotherly converse the employer and his employees, do not correctly describe the situation as far as railways are concerned. In these railway wage controversies the two sides never see each other. The mediator does not even carry messages from one to the other. He is the confidential repository of the concessions which each side is willing to make, and when these concessions have become sufficiently large to bring the contestants together he proposes a compromise. It is

[7] *Quart. Jour. of Economics,* Nov., 1910, p. 144.

a game of strategy in which diplomatic talent of the highest order is required on the part of the mediator.

It is worthy of note that in no instance has the original demand for a modification of existing schedules come from the railways. Railway managers have apparently felt it wiser to let well enough alone. They have preferred to cut down or readjust their working forces in times of light traffic rather than bring on a struggle by upsetting fundamental conditions. This is partly to be explained by the fact that during most of the period under consideration railways dealt separately with their own employees and were in a weaker position strategically than now under the plan of concerted movements. Moreover, it is more than probable that increases in wages did not distress them so seriously in the days when the capacity of their plants left some leeway for expanding business, and when there was a more generous margin between income and outgo.

In view of the fact that the controversies have always had their origin in a demand from the side of the employees, the verdict even though a compromise has always resulted in giving something to the men. It has meant a steady increase in wages and a steady improvement in working conditions. This does not mean that the increases are necessarily unjust. But under the conditions—with the strategic advantage on the side of the employees whether dealing with one railway or a group—the result is inevitable. Even if the railways' unwillingness to grant the demands has merit, there is no way of enforcing their claims. Playing a game in which the cards are stacked against them, they must acquiesce in the outcome, which usually whittles down but never rejects the demands of the employees.

These mediation proceedings in the nature of the case have been secret. No details have ever been given out and even the agreement has not been made public unless the parties authorized it. It is evident therefore that the public has had little information upon which to judge the equitableness of the settlements. They have only known that peace has reigned.

As the size of the contesting forces has widened the gap between employer and employee, as the conflicts have become more serious, and as the increasing gravity of the railways' financial condition has made a wage increase a matter of genuine alarm, resort has been taken more commonly to the method of arbitration. This has

meant the choice of one, or under the amended statute two, non-partisan arbitrators. Selection has been a task of the greatest difficulty. In almost no case have the representatives of the contestants been able to agree on the independent member or members of the board, and the burdensome duty has fallen on the government mediators. These officials have as a rule consulted the two sides before making their selections, and have often requested lists of acceptable men, in the hope, says Dr. Neill, that at some time the same name might appear on both lists, but it never did.

The independent arbitrator, like the juryman, must have no preconceptions. His affiliations with life must be untainted by contact with railways. If he has ever had experience in an arbitration, he is likely to have incurred the displeasure of one side or the other sufficiently to render him unacceptable. It follows that he must be a man so far removed from the controversy and so completely dissociated from the railway industry that qualification for his task necessarily involves profound ignorance of the subject.

But it is obvious that while impartiality and diplomatic skill are necessary, ignorance of the questions at issue is not. A wage schedule is a complex affair and its complexity is growing with the tendency to lay greater stress on working conditions and less on rates of pay. In the conductors' and trainmen's case, for example, the board had to consider the demands of conductors, baggagemen, brakemen, and flagmen in passenger, freight, and yard service, in local and through service, in electric and steam service; and it had to pass upon questions such as length of the working day, overtime and how computed, compensation for deadheadings, for double-headed trains, and for holding men away from their home terminals. The representatives of the two factions are experts chosen for their thorough knowledge of the issues and their skill in presenting them. The umpire enters the hearings usually with no acquaintance even with the elementary principles of railway wage schedules. He listens to the highly technical testimony of witnesses—employees and operating officials—and at the conclusion of the hearings he is set upon in conference by the other two so-called arbitrators. His superficial half-knowledge results in inconsistent rulings, and his lack of background leads him to the natural conclusion that there is merit in the contentions of both sides, and that justice lies somewhere between. The unsatisfactory verdict, frequently ambiguous and conflicting in its different provisions, gives opportunity for a

further continuance of the struggle on the individual railways that have been parties to the concerted movement. Employees take advantage of the vagueness of the award to demand terms from their own immediate employers that were not contemplated by the board, and railways use these ambiguities as an excuse for delaying the inauguration of the new schedule until supplementary rulings can be obtained. These decisions of arbitration boards lay down no helpful precedents for future action, and have no general educational value. The situation is in no wise improved when two umpires take the place of one. What is needed in the independent arbitrators is not merely a high degree of mentality or diplomatic skill, or profound knowledge of the labor problem in general, but rather a thorough familiarity with conditions of railway labor. This compromise practice into which independent arbitrators are forced by their lack of expert information is illustrated in the conductors' and trainmen's case in Eastern Territory last year. In that case the railways contended that the employees had received increases in 1910 which placed them on a par with other classes of trainmen in 1913 and that therefore no increase was justified. With this position the employees took issue. It was a critical point in the case, yet the arbitrators were unable, by their own frank admission, to become sufficiently competent in the space of the two months allowed by the agreement, to decide this fundamental issue.

But not alone in the actual awards have the decisions of the boards been unsatisfactory. In many cases the explanations of these decisions have been unimpressive, and the reasoning unacceptable. In the firemen's case in 1913 the arbitrators, with a shrewdness which ought to find more imitators, handed down their decision and gave no reasons whatever. A careful reading of the decision in the conductors' and trainmen's case leaves one with a lurking suspicion, which it is difficult to dispel, that the board decided first on the amount of increase to be granted and later found a reason therefor. The engineers' board of 1912 discussed at some length the insoluble problem as to what is the basis of a fair wage. They were forced to the conclusion that the science of economics furnished no answer, and that they could only approximate an answer by comparing railway wages for similar service in other parts of the country and wages in other industries of like character. It is no reflection on their method to point out that

in order to use this comparison they employed statistics the value of which was extremely doubtful. How the award of this board was received by the railway labor world in general cannot be expressed better than in the picturesque language of Mr. Stone, chief of the Brotherhood of Locomotive Engineers, in his testimony before the Senate Committee on Interstate Commerce in 1913:

> . . . They selected five men of international reputation, very learned men in their professions, but who knew absolutely nothing about the A B C of railroading or the fundamental principles underlying a wage scale. They would not have known a box car from a freight car, or a passenger engine from a freight engine, if they had met them coming down the street. They started in to make a wage scale for 32,000 men, with the local conditions underlying the 54 railroads, and the result was that they stayed together as a unit, and if reports are correct these five men representing the public, for fear they might become contaminated with the other members of the board, held meetings of their own, which, if true, was an offense absolutely inexcusable, in my opinion. The result was that when the full board did meet the steam roller worked overtime and they had their own way. We got what they called an award. Nobody knows yet what that award really means.
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> On the 29th day of April, 1912, we signed a contract to arbitrate. It was to be binding for one year from that date—May 1. It expired on May 1 of this year. On the 28th day of November they handed down the first draft of their award. On the 16th day of February they handed down a subdraft of the report, or rather an additional explanatory draft of what the original draft really did mean. And now we are back to them trying to find out what the last award they handed down really means. And now that the time limit has expired—on May 1 of this year—only 19 roads of the 54 have put it into operation, and we are still trying to get the rest, and we hope at least that our grandchildren will get the benefit of the award. . . . They were very learned gentlemen in their particular class. One man has an international reputation as a geologist. He wrote a part of some 80 or 90 pages of this report, on political economy and sociology, and arbitrated a number of questions that no one dreamed would ever be arbitrated. That was the unfortunate feature of it.

Possibly Mr. Stone's indignation was somewhat enhanced by the relatively small increase in wages that he obtained. But his criticism of the method of arbitration is fundamentally sound. Being extra-statutory, the board declined to put witnesses under oath. Its decisions were not confined to the testimony. On the contrary, several months were spent in accumulating additional material after the hearings closed. Its rulings were capable of much misinterpretation, and negotiations on individual railways dragged on interminably. The men did not care to renew the experiment.

It becomes clear then that a substitution of arbitration for mediation has lost to the country and to the contestants the expert service of trained mediators. Moreover, because of the method of selection, and the type of men chosen as intermediaries, the arbitration procedure has become largely a formality resulting in compromise verdicts, which as shown by the discussion have not been thus far as satisfactory to either side as were the agreements under the mediation process. We have not therefore obtained either from the mediation method or that of arbitration results of enduring value. Under the policy of mediation we have developed experts in the interpretation of railway wage schedules, but these experts have been debarred by the very nature of their office from considering issues on their merits. Under arbitration, the forms of a judicial hearing have been conscientiously observed, attempts have been made to weigh evidence and to reach just conclusions; but the men upon whom the burden of decision has fallen have not been experts. One of the important consequences of this is that the public, whose agents the independent arbitrators are supposed to be, has been at a disadvantage, and has not been adequately represented.

It must be clear that we need above all things else, for the handling of these great labor disputes, a group of independent persons who have become expert through permanence of tenure. Will such men be chosen voluntarily by the two sides as arbitrators or are they likely to incur to such an extent the hostility of one side or the other as a result of some one of their awards as to make their services useless for succeeding arbitrations? It would be natural to expect that any permanent body of arbitrators would quickly become unacceptable to one side or the other or both. The long continued success of the mediators under the Erdman Act was in large part due to the fact that they made no pretense of settling questions on their merits. A settlement after thorough investigation will not usually strike the middle point between the contesting sides. Again it is the fear of the employers that such a board would "get into politics" and of the employees that it would fall into the hands of the employing class. Mr. Carter, president of the firemen's brotherhood, asserts that if the same class of men were selected for permanent arbitrators that is usually selected for higher judicial positions, we should find men whose recognition of property rights was more pronounced than that of the rights of man.

If such a board of official arbitrators were created and the parties to the contest should refuse to invoke their services, ought they to be compelled to do so? Ought we to attempt to introduce compulsory arbitration? Such a proposal does not at the present time command serious attention. The enthusiasm for it in this country has perceptibly cooled in recent years. I agree with the position of Professor T. S. Adams that compulsory arbitration applied to a public service industry like the railway would probably be held to be constitutional, and I am inclined to believe that his plan for "compulsory collective bargaining" in industries of this character is economically workable.[8] But the impracticability from the political standpoint of this form of arbitration rules it out of consideration for the present.

Compulsory arbitration has not realized its early promise in countries where it has been tried. One of the fairest and most sagacious students of the labor problem in the South Seas, Dr. Victor Clark, has reached the conclusion that compulsory arbitration has been successful only among unorganized laborers and that the powerful trade unions have not been prevented from striking when it has been to their interest to do so. Compulsory arbitration succeeded in the early years when the laborers were securing constant increases in their wages, but the ardor of the unions has cooled as the verdicts have become less favorable. It is of interest to note that even in decisions under compulsory arbitration the lure of the compromise is ever present. A recent investigator of conditions in New Zealand has the following to say concerning the basis upon which decisions have been rendered:[9]

> The various judges who have at different times presided over the court disclaim for their judgments any basis of profit-sharing. Nor do they seem to have taken more than general notice of increasing cost of living, though this point is often emphasized by the trade-union representatives in argument before the court. The customary wages in the industry under review and in others of a similar nature have some bearing on the results reached, but in general it evidently has been a case of "charging what the traffic will bear," or as Judge Heydon of Sydney stated it, the men are given what in the court's opinion they might have secured without a court, considering their own union strength and the resisting power of their employers.

This seems to throw us back to the point from which we started. As a matter of fact the situation is hopeless, and will remain so,

[8] Adams and Sumner's *Labor Problems,* p. 328.

[9] Kennaday in *Yale Review,* May, 1910.

as long as we delude ourselves into thinking that we can under present economic conditions find a basis for wages in any theory of ultimate reasonableness. It may be that we are not merely chasing a will-o-the-wisp when we are hunting for a reasonable wage, but we are at any rate seeking the unattainable. No more in the determination of a wage scale than in the determination of a railway rate is there an exact mathematical formula for reasonableness. So long as the two parties to the dispute are free to dicker undisturbed by outside influences, the conclusions reached will be the resultant of the bargaining skill and brute force of the contending factions; if arbitrators intervene guess-work and compromise will play their part. Moreover, we are dealing here with an industry in which an interruption of service quickly becomes intolerable. Consequently we cannot permit the contestants to settle their differences by employing the customary weapons of labor warfare. So we set up devices under the sanction of law as a substitute for force. As a rule and in the long run these arbitration boards will give to the men what they might if left undisturbed have secured by their own efforts. The public has gained peace but it has not reached any final solution of the wage problem.

No escape from the obstacles with which this question is beset will here be attempted, but it is submitted that the gravity of the situation will be much relieved, and the question far more intelligently handled, if provision is made for a compulsory investigation by non-partisan experts of the issues involved in any controversy, and for the proper presentation of the results. Specifically, the principle of the Canadian Industrial Disputes Act should be adopted in this country. This act declares a lockout or a strike to be illegal until the matters in dispute have been investigated by a government board, and pending the investigation conditions are to remain as they were before the dispute arose. In Canada, the investigating boards are temporary, appointed for the immediate controversy and discharged when their reports have been rendered. They consist of three members, one representing each side and a third chosen as umpire by the two, or, if the two fail to agree, by the Minister of Labor. However, these boards are not merely for investigation. In fact, their main purpose is to effect a conciliation and avoid a strike. Our experience with the railway labor situation as summarized in this discussion would lead us to expect that a board chosen in the Canadian fashion would not meet

the requirements. While in Canada the same man has frequently served as chairman on different boards, there is no requirement that he shall do so. In this country, in the present temper of labor and capital, there is little likelihood that the same man would be acceptable for long. If a new man is chosen each time he lacks the necessary knowledge and experience.[10]

Those responsible for the investigation and its results should be permanent government officials devoting their time exclusively to this work. While an investigation is under way, they might very properly be assisted and checked by representatives of the two sides.

The call for expert investigators is so imperative as to require little argument. In the first place, the merits of the immediate issues need to be studied by those who possess the necessary qualifications, and all the facts that would be helpful in creating an enlightened public opinion should be disclosed. Mediators and arbitrators, limited as they have been in time, and restricted to issues directly submitted, have in most cases confined themselves to the immediate wage contract. As a consequence one adjustment has been of little or no assistance for the next. It might well be one of the functions of such a body to make the public realize that a reasonable wage is impossible of attainment. We need much enlightenment on such fundamental issues as the relation of wages to cost of living, and to railway operating efficiency. Such questions as the following are demanding intelligent answers: Is there any logical relation between railway wages and railway output? between wages and the capacity and efficiency of the plant? For example, is there any proper connection between a

[10] Professor Adam Shortt of the Canadian Civil Service Commission who has served as chairman of a number of boards, including several involving railway cases, in a letter to the writer of this article, suggests as a solution for the difficulty in Canada that three or four persons be named by the government as constituting a panel of eligible persons from which the chairman of each board must be selected. "It is essential to the most effective service of the chairman, that he should not be forced upon the parties; and yet it is equally essential that he should, in large and complex cases, have considerable previous knowledge of the conditions involved, and that he should also have experience in dealing with such cases. Assuming that one man has this combination of qualifications in greater degree than any others, he will be more frequently selected or accepted with confidence and have greater influence in effecting the desired results, if he is selected from a number of available chairmen and is not the only person allowed to serve."

trainman's wages and an increase in trainload? between an engineer's wages and an increase in tractive power? Again, have the risks and responsibilities of trainmen increased or decreased with the introduction of modern operating tools and methods? Is the working life of a trainman shorter than that of his fellow worker in similar industries outside? How does the railway employee's wage compare with that of workers in other highly skilled occupations? Are the brotherhoods receiving wages out of proportion to those of other classes of railway labor? Is there and should there be any relation between railway wages and railway revenue? Is the question of fair wages involved with the questions of fair interest and fair profits?

A group of permanent investigators would develop skill in weighing evidence, would build up a body of valuable precedent, would accumulate an experience that would be enriched constantly with the passing of the years. For these labor struggles move in cycles, and the issues that investigators had passed upon would appear again in familiar form as the basis for later demands. Morover, these men would acquire facility in the presentation of the results of their investigations in terms that the public could understand. It is essential, if public opinion is to be invoked in aid of settlements, that the issues shall be freed of all technicalities and stated in a manner to arouse public interest and stimulate public discussion. The difficulty of such a task is often underestimated.

Again, it is not too much to hope that such an investigating board might sometimes effect a settlement between the parties during the period of investigation. Professor Adam Shortt, whose connection with the Canadian Act has already been referred to, writes thus of his own experience:

> . . . More than half the battle, in several of the largest cases on which I acted, consisted in getting one or other, sometimes both, of the parties to simply bring their case before the board. The chief argument in winning them over was that the threshing out of the situation before the board did not commit either party in advance to any feature in a settlement or even to any settlement at all. But once induced to present their cases with perfect freedom as to the results, and once the chairman could secure the confidence of both parties, a settlement was virtually insured, as the alternative evils and losses were quite obvious.

The success of the investigators in settling disputes during the progress of the investigation would depend upon the personality

of the government investigators and their skill in building up a reputation for impartiality. The tendency would of course be for them to become increasingly unpopular as time went on, for their conclusions concerning issues investigated, if of a character to command public confidence, would frequently strike hard at the contentions of one side or the other. But whether these investigators are to be permanently acceptable to the opposing factions is not after all the controlling consideration. These are public questions and it is the public that demands enlightenment.

As already noted, such a plan would forbid strikes or lockouts during the period of investigation. After the results were published, this restraint would be removed. But the likelihood of a labor outbreak following the publication of the results of an investigation would be remote. The very fact that the contestants would be compelled to delay their conflict would have a tendency to develop a spirit of compromise. This is of great psychological import in any impending quarrel. Again, the territory involved is so vast, the leaders of the labor organizations are so mindful of their great responsibilities, the railway managers are so sensitive to public opinion and so watchful of their earnings, that strikes in any event are not at all probable in the future in connection with this class of controversies. Moreover, the probability of a strike is very greatly lessened when the public has once become thoroughly informed on the issues and is prepared to take a hand.

As for the amendment of our existing statutes covering mediation and arbitration, this may, except in details, properly be left until the results of compulsory investigation have been appraised. It has been suggested that the Newlands Act should not be confined to employees in train service, but should be extended to include all railway employees; and it has been proposed that there should be some sort of coördination between the Board of Mediation and Conciliation and the Interstate Commerce Commission in the matter of increased wages and increased rates. It may be, as has many times been suggested, that the Interstate Commerce Commission will be obliged eventually to give more attention to operating expenses and to take over the regulation of railway wages. It is clear that the Commission at present is not disposed to fall in with the suggestion usually made by arbitration boards, and raise rates to compensate for the increased wages that the boards have awarded. That these boards have taken a sound position

in insisting that they have no concern with the ability of a road to pay has already been conceded in this discussion. But the fact remains that the margin of railway net revenue is growing constantly narrower, and that the railways are contemplating with much concern the steady increase in wages which they are unable to check and the hardening of rates which they are unable to disturb.

No final solution of so perplexing a problem as that of the relations of capital and labor is to be expected within the near future, even in the field of public service corporations, but we can begin at once to study the whole question in a thoroughgoing fashion and with the use of the most highly developed scientific methods, and thus lay the foundation for a larger participation of the public in the settlement of disputes in which its interest is so fundamental.